



**Town of Westport**  
**Planning & Zoning Commission**  
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## MEMORANDUM

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**TO:** Members, Planning and Zoning Commission

**FROM:** Mary Young, Planning and Zoning Deputy Director

**DATE:** October 6, 2020

**RE:** **Pre-Application Meeting for 1 Burr Road and New Senior Care Facility**

### **1 Burr Road, Property Description and Existing Use**

1 Burr Road is a 0.90-acre (39,351 SF) property located at the corner of Burr Rd and Post Road West in the Restricted Office-Retail District (RORD #1), and the Coastal Area Management Boundary. The site is currently improved with a 42,000 SF <sup>+/-</sup>, 3-story building occupied by the Westport Rehabilitation Complex and used as a skilled nursing facility or nursing home. There are 120-beds in 63 rooms in the facility. There are approximately 21 surface parking spaces on site. The existing conditions are non-conforming to Building Height, Floor Area, FAR, Coverage, Setbacks, Parking, and Landscaping. There is limited privacy afforded to patients as most (57) rooms are shared.

The existing facility has continued operations since the 1960's under different management and pre-dates the regulations adopted in 1977 applicable to nursing homes (Amendment #200).

Hospitals, nursing homes and related institutions are currently permitted pursuant to §11-2.3.2 and §32-3 in residential and non-residential districts subject to Planning and Zoning Commission approval of a Site Plan and Special Permit with Special Conditions. §32-3, Hospitals and Other Medical Institutions, is similar but distinct from other regulations including §32-15, Managed Residential Communities; and §39A-3 that allows ALFCIL facilities in the Inclusionary Housing Zone/Overlay District (IHZ) recently used to approve LCB Senior Living at 1141 Post Road East, and intended to be used by Maplewood Senior Living at 170, 172, 174 & 176 Post Road West and 38 Kings Highway North.

The Commission last granted approval for renovations to the facility at 1 Burr Road in 2006 pursuant to Res. #06-070, following the granting of variances by the Zoning Board of Appeals pursuant to Case #6589 for: §22-4.1 (Front Setbacks), §22-5 (Height), §22-3 (Coverage), §22-7 (Building area), §22-8 (Floor Area), §22-9 (Architectural Design); and §35-2.2 (Front Landscape Area).

### **Recent Background**

At a Pre-Application meeting held on 6/6/19 Attorney Len Braman presented a proposal to convert the existing building at 1 Burr Road into a boutique hotel. Attorney Braman had subsequent meetings with Town Officials to discuss the idea. Attorney Braman's client subsequently decide to go in a different direction and P&Z staff invited the applicant to share the new vision with the Commission and receive feedback, and to begin contacting neighbors to solicit any concerns.

**Tax Assessor's Photo dated 7-12-15 of Existing Nursing Home at 1 Burr Road**



**Proposal**

Attorney Leonard M. Braman and Rick Redniss are representing the owners of property at 1 Burr Road LLC. Rick Redniss submitted a Pre-Application Meeting Request to amend §6, Non-Conforming Uses, Buildings and Lots, to add new section §6-7, Redevelopment of Nursing Home Facilities, to enable Redevelopment of nursing home facilities when located on lots with a minimum of 200' of frontage on the Post Road, with a minimum lot area of 30,000 SF, in the RORD #1 District, if/when the Commission finds such Redevelopment into an assisted living and/or full care facility improves the streetscape, allows for private rooms (with no increase in the number of beds), and results in a Total Coverage reduction.

**Process Considerations**

A Pre-Application Meeting is a non-binding forum allowing an applicant to obtain feedback on a proposal from members of the Planning and Zoning Commission without expending resources associated with filing a formal application. §7-159b of the Connecticut General Statutes is the enabling legislation that allows for a non-binding forum between a future applicant and the Planning and Zoning Commission to exchange ideas. CGS §7-159b states:

*"A Pre-Application review and any results or information obtained from it may not be appealed under any provision of the general statutes, and shall not be binding on the applicant or any authority, commission, department, agency or other official having jurisdiction to review the proposed project."*

**Preliminary Analysis**

Text Amendment approval will be required to adopt proposed §6-7. If adopted, it will benefit the only existing nursing home in Westport located at 1 Burr Road. This approach to planning by regulation (rather than by variance), to facilitate improvements to a particular site is similar to the approach taken when the Planning and Zoning Commission approved:

- New section §6-6, Redevelopment of Split Zoned Properties, to facilitate Redevelopment of the Westport Inn at 1595 Post Road East pursuant to Amendment #586 in 2008;
- New section §6-6.2, Non-Conforming Automobile Dealerships, to facilitate planned Redevelopment of 176 Post Road West for Tesla pursuant to Amendment #755 in 2018;
- Changes to §32-12, Inclusionary Two-Family and Multi-Family Dwellings, to facilitate Redevelopment of 1480 Post Road East (former Roger's Septic Tank site), pursuant to Amendment #772 in 2019; and
- New section §32-26, Adaptive Reuse and Redevelopment of Non-Residential Buildings to Housing, to facilitate Redevelopment of 41 Richmondville Ave. (Mill at Richmondville) pursuant to Amendment #777 in 2020.

The Town Attorney's Office has provided comments in the recent past that it is "legal" and within the authority of the Planning and Zoning Commission to approve regulations that may benefit only a single site. Attorney Nicholas Bamonte offered the following comments on 5/22/20 prior to the Commission's adopting Text Amendment #777 that benefitted 41 Richmondville Avenue:

*"I have had an opportunity to review the proposed text amendment and related materials. From a legal perspective, I have no concerns or issues with the proposal. It is my understanding that, if passed, this amendment would potentially apply to only one property in Westport. Nonetheless, I do not believe that this amendment, and such limited application, would constitute 'spot zoning' under the law. Spot zoning requires two elements: (1) a change of zone affecting only a small area of land and (2) a change which is out of harmony with the comprehensive plan as represented by existing zoning in the area. Clearly here, the first element is not met as this is not a proposed zone change, but rather a new supplemental use."*

A referral of the Text amendment proposal to benefit 1 Burr Rd will be sent to the Town Attorney's Office for review if/when a formal Text Amendment application is submitted.

**§6-7, Redevelopment of Nursing Home Facilities, and Proposed Conditions at 1 Burr Rd.**

The applicant's draft text, §6-7, Redevelopment of Nursing Home Facilities, proposes unique zoning standards for setbacks, building height, coverage, floor area ratio, landscaping, and grading requirements. The minimum parking requirements (1 space for each 3 beds) is the same as is currently required for Hospitals and Convalescent Homes pursuant to §34-5.

The applicant's Pre-Application Zoning Analysis and Coverage Exhibit show the proposed standards if adopted will allow:

- A. Setbacks to be maintained;
- B. Floor Area to increase (by greater than 50%);
- C. Building Height to increase (by adding two-stories);
- D. Total Coverage to decrease (by more than 10%);
- E. Density to moderately decrease (by 1 bed);
- F. Landscaping to increase (by doubling what exists); and
- G. Parking to increase (by doubling what exists).

It may be considered consistent with the *2017 Plan of Conservation and Development* to encourage Redevelopment to "go up not out," as allowing more Building Height rather than increasing building area is better for the environment as more Building Area adds more impervious surface resulting in increased stormwater runoff which is contrary to the sustainable initiatives promoted throughout the Town Plan.

The applicant's draft architectural cross section shows parking below the building will be provided. This will address concerns raised during the last Pre-Application Meeting related to limited parking on site and limited parking surrounding the facility. The applicant's draft architectural rendering shows New Construction of the facility that will enhance the appearance of the building. This too will address observations made by some Commission members during the last Pre-Application Meeting suggesting "saving" the building is not worth it and replacing the building and locating parking below the building would be more advantageous.

### **Feedback Requested from the Planning and Zoning Commission**

The applicant's Cover Letter dated 9/30/20 identifies feedback is requested on the following:

1. Overall feedback on the text change and potential redevelopment of the property.

Members of the Planning and Zoning Commission may find the proposal is designed to improve conditions on site for the benefit of future occupants of the facility and for neighboring property owners.

2. Feedback on the Building Height request.

The applicant explains a taller building is needed to provide parking below the building. As a reminder, overall Building Height is measured from Average Existing Grade around the building and if/when grading is proposed Building Height is measured from whichever average grade is lower (existing versus proposed conditions).

3. Feedback on the Parking request.

The applicant explains the parking standard will remain the same; 1 space per 3 beds.

**4. Discussion regarding any conflicts of the regulations that need to be addressed.**

The applicant requests review of the proposed text to determine if there are any conflicts with the regulations that will need to be addressed. There are no known conflicts.

The grading language in §6-7.8 proposes allowing grading within 5-feet of the property line without obtaining a variance (as is ordinarily required pursuant to §32-8.3.2), if/when approved by the Town Engineer, AND if/when the Commission makes a finding no adverse impacts to neighboring property owners will result. The proposed language may be considered consistent with other language previously adopted. Similar language was adopted by the Commission as part of Text Amendment #772 in 2019 in support of Redevelopment of 1480 Post Road East.

The Town Engineer met with Dave Ginter, the project engineer working on 1 Burr Road, and offered preliminary feedback stating he would not object to the proposed language in §6-7.8, as the project as a whole appears to represent an improvement in comparison to existing conditions.

**5. Waiver request for the submission of Traffic Impact Analysis as described in §44-2.5.**

The applicant explains this waiver is being requested for two reasons. First, due to the pandemic, traffic patterns for both the general population as well as for the adjacent school are not indicative of historic or future traffic patterns. Second, as the potential use and number of beds remains similar to current conditions and considering that the proposed use is a very low traffic generator, a full traffic study is not warranted. In short, there is no anticipated change in traffic impacts and the required traffic data cannot be collected or used to project future traffic conditions.

A similar request was made to the Commission by Maplewood in anticipation of a future application. Maplewood provided a Traffic Impact Statement prepared by a Traffic Engineer. The Commission responded in the affirmative to the request and should consider doing so again. Staff recommends the applicant should provide a Traffic Impact Statement if/when a formal application is submitted.

## **Next Steps**

Depending on the feedback received at the Pre-Application Meeting, the applicant should submit a Text Amendment and Coastal Site Plan/Special Permit application for review at a future public hearing of the Planning and Zoning Commission at which time neighbors within a 250' radius of the subject property will receive a Notice Letter sent in an envelope marked "**Urgent,**" in red, in hopes of engaging affected property owners at the public hearing. Additionally, the applicant should continue to reach out directly to neighboring property owners, representatives from the Board of Education (due to the proximity of Kings Highway Elementary School across the street), Town Officials, and others who will be affected by the project.

The applicant should also consider adding information as part of a future application about how the proposed facility at 1 Burr Road will be distinct from the proposal recently made by Maplewood to understand what benefits will be brought to the residents of Westport by potentially having both facilities operating in Town.

**Materials reviewed and available in the P&Z Office and on the Town's website [here](#):**

Pre-Application Meeting Request Application Form endorsed by Rick Redniss, dated 10/5/20

Pre-Application Request Cover Letter, prepared by Rick Redniss, dated 9/30/20

Burr Road Proposed Text, prepared by Rick Redniss, dated 9/30/20

Burr Road Comparison Coverage Exhibit, Sheet COVEH-1, prepared by Redniss and Mead, dated 9/30/20

1 Burr Road Pre-Application Zoning Analysis, prepared by Redniss and Mead, dated 10/6/20

1 Burr Road Architectural Renderings, prepared by Meyer Architecture, 2 sheets (undated), received 9/30/20

1 Burr Road Architectural Cross Section, prepared by Meyer Architecture, dated 9/9/20